

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order by President Lesly Smith at 9:30 A.M. on June 8, 1999. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen Jack McDonald, Sam McLendon, and Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Acting Finance Director Cheryl Somers, Fire-Rescue Chief Ken Elmore, Fire Marshal John Wandell, Information Systems Manager Spencer Wilson, Personnel Director William Crouse, Police Chief Frank Croft, Assistant Police Chief Michael Reiter, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Planner/Projects Coordinator Timothy Frank, Public Works Director Al Dusey, Public Works Facility Maintenance Division Manager Joe Ugi, Recreation Director Russell Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President Smith.

III. PRESENTATIONS - NONE

IV COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky reminded everyone of Flag Day on June 14, 1999, and noted that the Town was preparing for hurricane season, urging all citizens to be aware and to read all information available.

Mayor Ilyinsky commented that it had been an honor to serve with Assistant Town Manager Peter Elwell, and wished him the best of luck in his new endeavors.

President Smith commented that Mr. Elwell had been indispensable, and wished him the best in New Jersey.

Councilman McDonald commented that he would miss the professionalism of Mr. Elwell, his humor, and upbeat attitude.

President Pro-Tem Wyett wished Mr. Elwell the very best of luck.

Councilman Shaw commented that Mr. Elwell had brought a quality to the Town that would be difficult to replace, and that it had been a great pleasure to work with him.

Councilman McLendon commented that he had a great deal of respect for Mr. Elwell, who was one of the few people who could think and talk at the same time. He wished him well and thanked him for his work with the Town.

Mr. Elwell commented that he appreciated all of the comments today, as well as the opportunity to serve the Town of Palm Beach for twelve years.

IV COMMENTS OF MAYOR JOEL T. DAVES, CITY OF WEST PALM BEACH

IV Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach

President Smith reported that there had been a special City Commission Meeting held last night (June 7, 1999) in West Palm Beach, at which they passed and approved the Water Agreement with the Town of Palm Beach, although there were two small points that were not yet finalized. She introduced Mayor Joel Daves of the City of West Palm Beach.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Mayor Joel Daves reported that the reimbursement of the \$254,000 replacement item was now included as a term of the Water Agreement, and that since he had not been present during the entirety of the water negotiations, he had only a vague understanding of the remaining issues to be discussed. He noted that he and the City Attorney were now present to come to a conclusion on these matters. He presented the Water Agreement approved by the City Commission on June 7, 1999, with the three additions that were made to it.

Town Attorney Randolph commented that the cooperation during the meetings from the City staff had been exemplary. He explained that there were two unresolved issues remaining: the first item related to incorporating a wholesale formula with the Agreement that the parties could rely upon in the future when the system passed on to the Town of Palm Beach. The City had, in fact, put in such a formula, however, alternative formulas had been submitted by Town staff. The Agreement from the City basically said that after the City had put the \$18 million into the system, appropriated all of the Renewal and Replacement (R & R), that the City had met its obligation, and that any additional Capital Improvements Projects (CIP) or any other additional capital improvements that would be made after 15 years would be the responsibility of the Town of Palm Beach. The City had offered to agree to assist in the collection of those monies, extending the term of the Agreement until the costs had been paid pursuant to the terms of the Agreement. The position of the Town was that the City needed to accept the responsibility for additional CIP during the term of its ownership of the system, and if there was a need for a capital improvement in the 20th year, the City should recognize that it was a capital improvement that was required of the whole system, and that the system should bear the cost of that improvement system-wide, keeping in mind that the Town was 37% of the system anyway, and would be paying 37% of those costs. The City would only be bearing those costs for that period of time during which they continued to own the system.

Mr. Randolph explained that the wholesale item had remained somewhat flexible between the parties. The current language provided that on the 25th anniversary of the effective date of the agreement the wholesale figure that is reached by the City pursuant to the formula in the agreement would be given to the Town, and that in the event the parties do not agree with the City's rate calculations the parties could have the calculation reviewed by a mutually agreeable third party rate consultant. The City had agreed to incorporate additional language regarding wholesale rate calculations if the Town wanted it in the agreement. In many instances through the Agreement there was an opportunity for each side to consent.

City Attorney Pat Brown commented that some language had been drafted after the meeting last night, which addressed the consent issue, and which had been approved by the City Commission. In addition, the flexibility for the two staffs to continue working on the CIP had been approved.

Town Attorney Randolph advised that he believed the Agreement brought forward today was a good agreement, and it was the hope that the two parties could resolve the unresolved issues.

City Attorney Pat Brown addressed the two unresolved issues, giving the philosophy of the City regarding the CIP; that at the end of a 30-year period the Town would own the pipes. He pointed out that the City had many estimates as to what the pipes were worth, anywhere from \$5-\$40 million. At the end of the 30-year term, there would be an asset that the Town would be receiving at no additional cost, however, there was a value to it, and it would be something that the Town could use to reduce its costs if it chose to go the wholesale route. The City believed that the business deal was that the City would make the improvements, and also agreed to the 6% and 5% R & R, which would not be substantially used during the initial years of the Agreement, and would be a savings account for the Town. That system, at the end of 30 years, would have a remaining useful life. He explained that during negotiations, it had been proposed that if the CIP needed to be done in the 15th or 20th year, the City would also agree to have it spread across the rates city-wide, but in that event additional consideration would have to be given – the term of the Agreement would automatically extend from that point for 30-years on a retail basis, so that the new pipes could be re-amortized.

Mr. Brown addressed the second point, having to do with wholesale/ retail. He explained that the City had said that there would just be a list of criteria for arriving at a rate. He noted that Mr. Wyett had requested a formula, and a formula had been created, which was attached to the Agreement. However, the problem for the Town was that it required a calculation to be made each time that it was applied. He explained that it was something that was standard in the industry, was a vehicle for recovering costs with a rate of return, and was something that was very commonly used in the wholesale industry; the City believed that it was very reasonable and responded to the concerns of Mr. Wyett. Further enhancement had been added, so that there would be a process where the Town could test the accuracy of the calculations by using a third party rate consultant. He noted that the Town would have two options at the end of 30 years: take the formula, or go retail. In addition, negotiating could take place at that time.

Mr. Brown also noted that the surcharge would be removed as of July 1, 1999, per the resolution passed by the City Commission on June 7, 1999, subject only to the Town agreeing to the Agreement on or before June 15, 1999.

Mayor Ilyinsky urged that the Agreement be signed today, and thanked Mayor Daves for his presence today.

Councilman McLendon expressed concern regarding the determination of the City rates, noting that there seemed to be items and dollars included that did not seem related to the costs of operating a water system, such as the nature center which was referred to in the calculations.

Councilman Shaw commented that he was in favor of moving forward with the Agreement.

President Pro-Tem Wyett commented that he was concerned that if an agreement for extension was not reached, equitable adjustment should be made for the life of the pipes.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Councilman McDonald commented that he could accept the position of the City on calculating the wholesale rate, however, he did not accept their position on the system improvements, and agreed that some of the items raised by Councilman McLendon should be reviewed, such as the items included as part of the costs of operating the water system.

Attorney Brown explained that the nature center was a zero allocation in the calculations made for the wholesale rates. Insofar as the retail rates, the business deal was that the Town of Palm Beach was a retail customer, and the City would set rates pursuant to a rate study, and part of the negotiations had been dependent on the desire of the City to retain independence with respect to the rate setting. He explained that the nature center was an educational facility that had to do with the water source of the City; it provided people with education about the water source so that people could view the facility and gain information. It was fine to include it on the retail side, however, it would not be in the formula on the wholesale side.

Attorney Randolph brought forward a concern regarding the retail rates, asking if the City could decide to adopt a retail rate in the future, incorporating within the water rates a subsidization of the storm water system in the City of West Palm Beach, which would not benefit the Town.

Attorney Brown explained that it was a cost allocation issue. Costs would have to be allocated to both the rates and the revenues and expenses regarding the particular service. The City had a water distribution system, and a sewer distribution/treatment system. At the present time, two systems were in one enterprise fund: the storm water in one fund, and water/sewer in another fund. Costs and revenues were allocated to their respective systems, although they were under one master bond indenture. He noted that the City could not legally unreasonably burden the water system to subsidize the storm water system.

Councilman Wyett mentioned that Public Works Director Al Dusey was the unsung hero of the water discussions, since he had developed a relationship with the County which led West Palm Beach to understand that they had competition, which led to compromises. He personally thanked Mr. Dusey, on behalf of the Town.

Councilman Shaw moved that the Agreement be approved, incorporating the suggestion that negotiations start 5 years prior to the expiration, subject to any unresolved remaining issues as discussed today i.e., the formula for capital improvements. The motion was seconded by President Pro-Tem Wyett with discussion concerning the CIP issue.

Attorney Brown clarified that the remaining useful life was the issue, not the remaining term of the debt. He explained that 30-year bonds may be putting in improvements that have a 50 or 60 year useful life.

Town Attorney Randolph advised that he did not recommend any action by the Town Council today, as a result of the unresolved issues. He suggested that direction could be given to staff to attempt to resolve these issues with the City, and return to the Town Council with a report of the results.

President Smith commented that this was obviously not the time to make a motion, and requested that the maker of the motion withdraw the motion.

Councilman Shaw withdrew the motion to approve the Agreement.

President Smith requested that a time be arranged for a continuation of discussion of this item.

Councilman Shaw clarified that the respective staffs would resolve the CIP issues in the later years of the contract, and how that debt would be treated after the termination of the contract.

Attorney Brown agreed, and stated that an expression of the Town Council that approved the Agreement in concept, with the one issue still outstanding, and was something that the City was anticipating. He stated that the proposal of Councilman Wyett regarding starting negotiations 5 years before the termination of the agreement was agreeable, and would be recommended to the City Commission.

Town Attorney Randolph advised that he had no objection to a motion that said the Agreement was approved so far, with the understanding that there was a remaining issue to be agreed upon.

President Pro-Tem Wyett moved a conceptual approval of the Water Agreement, subject to both staffs discussing the outstanding issues. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with Councilman McLendon casting a negative vote.

It was agreed upon that discussion of Agenda Item V. A. (Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach) would continue at 9:30 A.M. on Friday, June 11, 1999, in the Town Council Chambers.

Further discussion of the Water Agreement with the City of West Palm Beach was deferred to Friday, June 11, 1999, as a continuation of the Town Council Meeting held on June 8, 1999. The following is a transcription of the meeting held on June 11, 1999:

The continuation of the Town Council Meeting of June 8, 1999, was called to order at 9:45 A.M. on Friday, June 11, 1999. Elected officials in attendance were President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen McDonald, McLendon and Shaw. Mayor Ilyinsky was absent from the meeting. Those in attendance representing the Town of Palm Beach were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Town Attorney John

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Randolph, Director of Public Works Al Dusey, and Deputy Town Clerk Susan Eichhorn. Others in attendance for all or a portion of the meeting were: City of West Palm Beach Mayor Joel Daves, City of West Palm Beach Attorney Pat Brown, and City of West Palm Beach Deputy City Attorney Claudia McKenna.

President Smith stated that discussion would continue on Item V. A. Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach.

Town Attorney Randolph reported that he was pleased to announce that a Water Agreement was now recommended for approval of the Town Council, subject to some minor language modifications to be made by the respective staffs. He noted that language had now been provided for the two primary items remaining unresolved at the last meeting (June 8, 1999) regarding provisions for the wholesale agreement and additional Capital Improvement Projects (CIP). He referred to discussion of the wholesale agreement language on page nine of the Agreement, explaining that the new language read as follows: "The wholesale renewal term shall be based on a wholesale rate to be determined by the parties in accordance with the procedure described below: a sample rate calculation using a wholesale formula shall be made by the City on or before the 25th anniversary of the effective date, and such wholesale formula and sample rate calculations shall be provided to the Town within 60-days of such date; it being understood that such sample rate calculation may change, based upon applying the wholesale formula on the transfer date. Upon receipt by the Town of the wholesale formula and sample rate calculation the parties shall commence good faith negotiations to facilitate the Town in its sole discretion, to select a retail renewal term, or a wholesale renewal term, or to allow the agreement to terminate at the end of the initial term."

Councilman McLendon asked the representatives of the City what the existing agreement with Royal Palm Beach called for in relation to adjustments in the future?

City Attorney Pat Brown replied that he believed that there was a CPI index, and the rates were fixed for a short term of 5-7 years. It was not a wholesale arrangement that the City could offer to a customer of any size.

President Smith commented that there had been exhaustive discussion of the Royal Palm Agreement during the negotiation period, and it had been realized that the terms of that Agreement and what it accomplished were very different from what the Town of Palm Beach was discussing.

In response to the query of Councilman Wyett concerning the rates that would have been calculated from the formula in the draft Agreement, Assistant Town Manager Peter Elwell replied that the City had used that formula to arrive at \$1.78 per thousand gallons as a wholesale rate, using today's dollars. Town staff believed that the appropriate rate in today's circumstances would be substantially lower than that, and the concern with having any formula was that it would not provide assurances, and that it would be a wise idea to remain silent about the exact formula, and allow that process to be negotiated in 25 years.

Attorney Randolph referred to page 11 of the Agreement, which addressed the concerns of Councilman Wyett regarding the assessment of Town users for the costs of storm drainage and sewer in the City of West Palm Beach in its rates. He noted that he had suggested to Mr. Brown that language be added in the rate section on page 11 saying that the Town consumers would not be assessed in the water rate structure for costs relating to storm drainage and sewer. The City had given consideration to that language, and had not been in agreement, but suggested that language be modified to read: "The City agrees to set rates in accordance with prudent rate making practices..."

After discussion of language regarding reverse osmosis solely for the distribution to supplement irrigation (page 4 of the Agreement), Councilman Wyett suggested that the word "solely" be taken out in order to clarify the usage, should an emergency situation take place.

Mr. Elwell explained that the quality of the water was such that the actual final use of the water could be something other than watering a lawn, however, the intent of the language in the Agreement was to provide the Town the opportunity to supplement for irrigation purposes.

Attorney Brown commented that the City understood that once the water got into the pipes the provision would not be very enforceable, however, the City had wanted the provision in to make clear the intent of why the water was going into the pipes in the first place. He suggested that the language "solely for the purpose of distribution..." be added to the Agreement on page 4.

In response to the concerns of Councilman Wyett concerning the possibility of a surcharge during negotiations past the 30th year, Attorney Brown explained that the City had statutory rights on the surcharge, which it had waived for the purposes of the 30-year term, and any extension by the Town of that term.

Town Attorney Randolph explained that the problem with the CIP was that the Town wanted a provision which would allow for additional capital improvements to be made if there was not enough in the R & R fund and after the \$16.5-\$18 million had been spent. A provision had then been drafted which would allow the Town to make additional capital improvements with the proviso that the City would assist it in floating any bond issues which might be necessary, and that the City would pay from City wide revenues the cost of those capital improvements during the time that the City continued to own the system; that upon transfer of the system to the Town, the Town would bear the remainder of the debt. The City had objected, but agreed to a provision where they would assist the Town in floating any necessary bonds, but that the costs would not be borne by the City wide system, but entirely by the Town. After further discussion between the two staffs, a compromise position had been reached, whereby the City would agree to bear the costs of part of the capital improvements City wide, but only up to \$2.5 million indexed from the date of the Agreement. That

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

indexing figure came up to \$3.5-\$4 million, and the Town wanted capital improvements over and above everything that was already in the Agreement. Additional amounts that may be needed to be spent over and above the \$2.5 million would be dealt with in an incremental fashion, with the proposal that in the event the additional \$2.5 was needed in capital improvements that the Town could either pay for it themselves, or the City would pay for it through the City wide system, but the Town would give a 5-year extension of the Agreement in consideration. Those increments would then continue in \$2.5 million increments for three additional 5-year terms. He noted that if the concept was agreeable to all, staffs would meet and refine the language.

Attorney Pat Brown noted that neither the Town nor the City had the opportunity for bond counsel comments on the paragraph, and there may be some fine tuning upon their review.

In response to Councilman Wyett regarding the default language on page 26, Attorney Brown explained that the City had a Consumptive Use Permit, and the Town was a consumer under that permit, and the City had a duty to supply the Town pursuant to regulatory obligations, and if there was destruction to the water plant, everyone would be equally affected. If a system wide emergency did occur, the City would do the best it could.

Town Attorney Randolph suggested that the language on the bottom of page 26 and top of page 27 read: "The sole remedies for default shall be suit for equitable relief, such as specific performance, an injunction, and/or damages."

Attorney Brown agreed with the modified language.

Mr. Randolph then referred to Item F regarding the recording of the Agreement, and explained that neither party was sure that the Agreement needed to be recorded; thus the language would be modified to read that the Agreement may be recorded in the public records, and if it was found that it needed to be recorded it could then be done.

Mr. Randolph referred to page 30 "L" in regard to the transfer, language had been added as italicized: "the rights are personal to the parties and they may not be assigned except upon the prior written consent of the other party, *which consent shall not be unreasonably withheld.*" Also on page 30, Mr. Randolph noted that it had been resolved that the attorneys would meet and draft language as Item "O" which would address agreement by each party not to take any action during the term of the Agreement which would adversely affect the ability of the parties to perform.

In response to the concerns of Councilmen Shaw and Wyett regarding parallel piping, Attorney Brown stated that was possible, as long as it was not competing with the City, as the exclusive distributor of all water, both irrigation and potable.

Councilman Shaw moved approval of Resolution 22-99. The motion was seconded by Councilman Wyett with the technical language modifications to be made by both parties.

Town Attorney Randolph read Resolution 22-99:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A RETAIL WATER SERVICE AND FRANCHISE AGREEMENT WITH THE CITY OF WEST PALM BEACH, AND AUTHORIZING THE MAYOR OR OTHER APPROPRIATE TOWN OFFICIAL AND THE TOWN CLERK TO EXECUTE THE AGREEMENT, SUBJECT TO APPROVAL BY THE CITY OF WEST PALM BEACH BY JUNE 15, 1999, PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

On roll call the motion carried 4/1, with Councilman McLendon casting a dissenting vote.

Councilmen McDonald and Shaw left the meeting at 11:00 A.M. on June 11, 1999.

At this time, Attorney Randolph brought up another matter from the Town Council meeting of June 8, 1999, for clarification: The amount of \$7,500 had been approved for allocation to assist with the I-95 interconnect project challenge, and a letter noting the objections of the Town had been drafted to the South Florida Water Management District which had been hand delivered to them.

Mr. Randolph requested clarification regarding the approval of the funding in the amount of \$7,500, which he had understood was to assist the El Vedado group, without the filing of an independent petition to challenge the project.

President Smith replied that it was her understanding that it had been a third party contribution in support of the actions of the El Vedado group, and that there seemed no apparent reason for the Town to take any independent action at this time.

Mr. Ned Barnes, of the Palm Beach Civic Association, commented that he had understood that the \$7,500 approved by the Town Council was to be donated to the El Vedado group.

Town Attorney Randolph responded that he had understood that \$7,500 had been authorized to be used in the Town efforts to assist the El Vedado group.

Because of the confusion regarding this matter, Councilman Wyett suggested that the issue be deferred to be clarified and discussed again at the July 13, 1999 Town Council Meeting.

The continuation of the Town Council Meeting of June 8, 1999, was adjourned at 11:20 A.M. on June 11, 1999.

IV APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER item XIII A.1., Resolution No. 15-99, Revisions to Rights-of-Way Standards Manual, to the Town Council Meeting of July 13, 1999;

Motion made by Councilman Shaw, seconded by Councilman McDonald to defer Item XIII A.1 - Resolution No. 15-99, to the July 13, 1999, Town Council Meeting. On roll call the motion carried unanimously.

DEFER item XIII A. 2., Resolution No. 17-99, Utility Pole Adjustment Policy, to the Town Council Meeting of July 13, 1999;

Motion made by Councilman Shaw, seconded by Councilman McDonald to defer Item XIII A.2. - Resolution No. 17-99, to the July 13, 1999, Town Council Meeting. On roll call the motion carried unanimously.

WITHDRAW item XVI. A. 1., Appeal of the Architectural Commission Decision of March 24, 1999, concerning 3 Golf Road;

Motion made by Councilman Shaw, seconded by President Pro-Tem Wyett, to approve withdrawal of Item XVI. A. 1, Appeal of the Architectural Commission Decision of March 24, 1999, Concerning 3 Golf Road by Mr. Ronald K. Kolins. On roll call the motion carried unanimously.

DEFER item XVI. B. 4. - Variance No. 9-99 - Robert Deziel, Trustee, 311 Brazilian Ave., located in the R-C Zoning District, to the Town Council Meeting of July 13, 1999;

Motion made by Councilman Shaw, seconded by Councilman McDonald, to approve deferral of Item XVI. B. 4 (Variance No. 9-99 - Robert Deziel, Trustee, 311 Brazilian Ave., located in the R-C Zoning District) to the Town Council Meeting of July 13, 1999. On roll call the motion carried unanimously.

MOVE to the end of the Agenda - item XVI. B. 7. - Modified Special Exception No. 9-99 with Site Plan Review - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; located in the R-A & R-AA Zoning District;

Motion made by Councilman Shaw, seconded by President Pro-Tem Wyett, to moved Item XVI B. 7. - special Exception No. 9-99 with Site Plan Review, to the end of the Agenda. On roll call the motion carried unanimously.

DEFER item XVI. B. 9. - Special Exception No. 15-99 with Site Plan Review & Variances - 375 S. County Association, 375 S. County Rd, to the Town Council Meeting of July 13, 1999

Motion made by President Pro-Tem Wyett, seconded by Councilman Shaw, to approve deferral of Item XVI. B.9 (Special Exception No. 15-99 with site Plan Review & Variances - 375 S. County Association, 375 S. County Rd; located in the C-TS Zoning District) to the July 13, 1999, Town Council Meeting. On roll call the motion carried unanimously.

Motion made by Councilman McDonald, seconded by President Pro-Tem Wyett, to approve the Agenda as amended. On roll call the motion carried unanimously.

IV COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Attorney Doyle Rogers commented that the Mar-a-Lago matter (Special Exception 9-99 with Site Plan Review) to be heard today, should be postponed to a time during the season, when all Town residents could be present.

Mr. William Guttman, Chairman of the Palm Beach Civic Association, commented that he agreed with the suggestion of Mr. Rogers. He urged the Town Council to deny the request of Mar-a-Lago to modify the application for special exception for the following reasons:

- ▶ The magnitude of the approvals requested in the modification were substantially greater than those sought in the March application.
- ▶ Most of the members of the Palm Beach Civic Association had left Palm Beach for the season before the modification request was filed.

Mr. Guttman noted that because the approval request was now moving from conceptual to final approval, seeking to construct a parking facility with nearly 50,000 sq. ft. of space, he believed that the modification aspects of the request should be deferred until the fall. Mr. Guttman maintained that with the filing of the Club's traffic management plan the record had been re-opened, and that a cross

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

section of residents should be present to address this issue. He noted that the plan revealed that the special events in the first two years held at the Club averaged 172, during the seven month period of October - April, and stated that he did not believe that any resident in the community had any idea that the use would be that intensive. Mr. Guttman observed that the Zoning Code allowed for a special exception for a private club, and not a private club/banquet facility/theater. He pointed out that the plan also revealed that the Club had violated the existing cap on attendance at special events on five separate occasions in the 97-98 season, and six times in the 98-99 season.

Mr. Eric Nord Gilbertson congratulated the Town Council on its work regarding water negotiations.

Attorney Ray Royce, representing the Mar-a-Lago Club, commented that the Mar-a-Lago item on the Agenda today (Special Exception No. 9-99 with Site Plan Review) should be heard as planned. He explained that the matter was before the Town Council in April, and at that time the application had pertained to a conceptual approval of the pavilion building. The only reason that the application had called for a conceptual approval of the pavilion building was that at the time the written approval of the National Trust for Historic Preservation had not yet been obtained. The letter had now been obtained, and the application had been amended to delete the word "conceptual," in order to ask for a final approval. Town staff had suggested that an on-site traffic management plan be presented for review, and a detailed plan had been prepared, with experts on call and ready to discuss the plan. He indicated that Town staff had also suggested the concept of a parking structure. He stated that he believed the applicant was entitled to be heard today.

APPROVED AGENDA

VIII. APPROVAL OF MINUTES OF MARCH 18 AND 19, 1999, APRIL 20, 1999, AND MAY 11 AND 20, 1999

IX APPROVAL OF CHECK REGISTERS FOR MAY 1999

X. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF MAY 26, 1999

The "APPROVED AGENDA" was approved through motion of President Pro-Tem Wyett, seconded by Councilman McDonald. On roll call the motion carried unanimously.

REGULAR AGENDA

XI PUBLIC HEARINGS

D. Designation of the Brazilian Beautyleaf Historic/Specimen Tree at 14 South Lake Trail and Correction of Number of Specimen Trees on 20 Blossom Way; Resolution No. 14-99 (*Deferred from April 13, and May 11, 1999*)

Town Attorney Randolph read Resolution 14-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA DESIGNATING CERTAIN SPECIMEN TREES LOCATED ON PROPERTIES WITHIN THE TOWN OF PALM BEACH, PROVIDING FOR THE RECORDING OF SAID DESIGNATIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Councilman Shaw moved approval of Resolution No. 14-99. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

E. Landmark Designation of 110 Clarke Avenue; Resolution No. 18-99

Town Clerk Pollitt administered the oath to all those who would be speaking to the following issues.

Mr. Timothy Frank, Planner/Projects Coordinator, reported that the designation of 110 Clarke Avenue had been reviewed by the Landmarks Preservation Commission, and it had been found to meet the necessary criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day reported that the property at 110 Clarke Avenue contained a Mediterranean Revival style house, designed by Marion Sims Wyeth. There had been alterations to the property, however, it retained the integrity of its original design.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Councilman Shaw moved acceptance of the Designation Report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman Shaw moved approval of Resolution No. 18-99. The motion was seconded by Councilman McDonald.

Town Attorney Randolph read Resolution No. 18-99 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call the motion carried unanimously.

F. Landmark Designation for the Pendleton Avenue Historic District; Resolution No. 19-99

Mr. Timothy Frank, Planner/Projects Coordinator, reported that after several requests, staff had studied the issue of historic districting with a Town-wide study, and had found that there were several areas in the Town that would be suitable for districting, such as the Pendleton District. The Landmarks Preservation Commission had found that the area met the criteria for designation as a Landmark District in the Town of Palm Beach.

President Smith commented that there had been vigorous opposition in the past when historic districting had been discussed, as there was with the Pendleton Avenue Historic District. She questioned whether it would be necessary to conduct a lengthy presentation on this, since the residents were opposed to the designation.

Councilman McLendon commented that he was normally opposed to landmarking properties that the owner did not want landmarked, and agreed with President Smith.

Councilman Shaw commented that he was not comfortable with the disagreement in this matter, and noted that he had not seen any advantages in landmarking a district over landmarking individual properties.

Councilman Wyett commented that he had read the Landmarks Report, and concurred that he would like to pass on this item. Councilman Wyett then moved denial of Resolution No. 19-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

XII ORGANIZATIONAL ITEMS

D. Administrative Officials

1. Appointment of Finance Director Pursuant to Section 2-136 of the Town Code of Ordinances

Town Manager Doney recommended Jane Skittone, as Finance Director, as indicated in his memorandum of June 3, 1999.

After discussion, Councilman McLendon moved approval of the appointment of Ms. Skittone. The motion was seconded by Councilman Shaw, who requested that Ms. Skittone appear at the meeting today as soon as possible in order to be introduced to the Town Council. On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

Councilman Shaw moved approval that Town policy dictate that any department head hired have the opportunity to meet the members of the Town Council on a one-on-one basis, prior to appointment. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

2. Designation of Acting Town Manager Pursuant to Section 4.03 of the Town Charter

Town Manager Doney referred to his memorandum of June 3, 1999, wherein he recommended that Fire-Rescue Chief Vincent K. Elmore be designated and approved as Acting Town Manager, pursuant to Section 4.03 of the Town Charter.

President Pro-Tem Wyett moved approval of the recommendation of Town Manager Doney to designate Fire-Rescue Chief Vincent K. Elmore as Acting Town Manager. The motion was seconded by Councilman McDonald. On roll call the motion carried 3/0, as Councilman McLendon and Councilman Shaw were temporarily out of the room.

XIII OLD BUSINESS

A. Resolutions

1. Resolution No. 15-99 - Revisions to Rights-of-Way Standards Manual (*Deferred from April 13, and May 11, 1999*) - **Request for Deferral to July 13, 1999, per memorandum dated June 3, 1999, from Town Engineer James M. Bowser**

This item was deferred as noted under Item VI. "Approval of the Agenda."

2. Resolution No. 17-99 - Utility Pole Adjustment Policy (*Deferred from May 11, 1999*) - **Request for Deferral to July 13, 1999, per letter dated June 3, 1999, from Mr. Sid Poe, BellSouth**

This item was deferred as noted under Item VI. "Approval of the Agenda."

B. Appointments

1. Architectural Commission - One Alternate Member Term to Expire March 2001 (*Deferred from May 11, 1999*)

After voting, The Town Council appointed Mr. Gilbert Messing as an alternate member of the Architectural Commission.

A. Other

1. Royal Park Bridge Status Report by the Public Works Director

Ms. Gail McKenna, PCL Project Manager, reported that the Royal Park Bridge construction project was on schedule. She advised that she would report progress at the July 13, 1999, Town Council Meeting.

2. Status Report on Town Preparation for the Y2K Transition (*Deferred from May 11, 1999*)

Information Systems Manager Spencer Wilson reviewed the status report contained in his memorandum to the Town Manager Doney dated May 3, 1999.

President Pro-Tem Wyett moved acceptance of the report, and moved approval of the request that all Town Department Heads provide written reports on the status of the Y2K transition preparations. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

3. Proposal by Police Chief Croft to Convert Payment of Police Department Special Detail Assignments to Overtime - Actuarial Report by Ms. Denise Jones, Gabriel, Roeder, Smith, and Company (*Deferred from May 11, 1999*)

After discussion, President Pro-Tem Wyett moved approval of the proposal by Police Chief Croft to convert payment of Police Department special Detail Assignments to overtime, with the information detailed in the May 11, 1999 memorandum from William C. Crouse, Personnel Director/Frank A. Croft, Police Chief, attached to the memorandum of Town Manager Doney, dated June 7, 1999; in addition, a report would be made to the Mayor and Town Council at the June 2000 Town Council Meeting to determine if the program was cost neutral. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

4. Report on a Feasibility Study for a Skateboard Area at the Recreation Center (*Deferred from April 13, 1999*)

Recreation Director Russell Bitzer referred to the report detailed in his memorandum to Town Manager Doney, dated May 24, 1999, wherein he gave the opinion that sufficient space was not available for a skateboard facility in Seaview Park. After discussion, the Town Council took no formal action.

***** Luncheon recess at 12:45 P.M.*****

***** The meeting was resumed at 1:40 P.M.*****

XIV NEW BUSINESS

1. Resolutions

1. Resolution No. 20-99 - Lake Worth Lagoon Partnership Grant Program Application, Par 3 Golf Course

Town Engineer Bowser reported that this project envisioned planting approximately 2,000 feet of Mangroves at the Par 3 Golf Course. He explained that the Florida Legislature authorized \$1.5 million for grant programs in the Lake Worth Lagoon; it was a 50/50 match, and the Town share would be \$240,000.

Town Attorney Randolph read Resolution No. 20-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN COUNCIL PRESIDENT TO EXECUTE A LAKE WORTH LAGOON PARTNERSHIP GRANT PROGRAM APPLICATION.

Councilman Shaw moved approval of Resolution No. 20-99. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

2. Resolution No. 21-99 - Designation of Parties to Sign Checks or Warrants

Town Manager Doney referred to his memorandum to the Mayor and Town Council, dated June 3, 1999, wherein he recommended approval of Resolution No. 21-99, authorizing Chief Vincent K. Elmore to be appointed as Acting Town Manager, and to be authorized to sign checks, warrants, and wire transfers.

Town Attorney Randolph read Resolution No. 21-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING PARTIES TO SIGN CHECKS OR WARRANTS ON BEHALF OF THE TOWN PURSUANT TO SECTION 2-36 OF THE TOWN CODE OF ORDINANCES.

President Pro-Tem Wyett moved approval of Resolution No. 21-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Appointments

1. Recreation Advisory Commission - One Alternate Member Term to Expire April 2002

After voting, the Town Council appointed Allen Shore as an alternate member of the Recreation Advisory Commission.

2. Other

1. Comcast Cablevision of West Palm Beach, Inc.:

a. Status Report of Renewal of Franchise Agreement, which Expires April 2000

Assistant to the Town Manager David Jakubiak reported that he had prepared a report, which had been presented to the Mayor and Town Council on May 26, 1999, regarding the Comcast Cable Television Franchise Renewal, which franchise would expire in April 2000.

Mr. Jakubiak recommended proceeding with a four phase approach, at a cost of approximately \$90,000, as recommended by the firm of Miller and Van Eaton:

Phase 1: Plan the Needed Surveys and Studies (estimated budget \$10,000).

Phase 2: Past Performance and Future Needs Surveys (estimated budget: \$60,000).

Phase 3: Town's Proposal to Comcast (estimated budget: \$15,000).

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Phase 4: "Informal" Negotiations (estimated budget: assume \$3,000/day of negotiations).

Ms. Diane Christie, Director of System Development for Comcast Cable commented that systems being built today were at 750 Mhz, although the current system of the Town at 550 Mhz did not mean that it was the bottom of the line. She pointed out that there were some mergers and trades going on in the industry, and Comcast had been traded in this particular system to another operator. She suggested that the Town Council may want to consider a one-year extension, so at that time it would be known which company would be handling the Town of Palm Beach.

Ms. Christie further explained that Palm Beach County was an entire cable system, so if the Town of Palm Beach, for example, was to be upgraded, the entire Palm Beach County system would need to be upgraded.

Assistant to the Town Manager Jakubiak recommended proceeding as outlined, according to the four phases enumerated in the report of May 26, 1999, and to proceed with the negotiations of the Franchise Agreement. He explained that there were ten months before the current agreement expired, and the four phases could be worked on during those ten months. He noted that Attorney Miller had affirmed that he believed the Town would be in a position to get the system upgraded if the phases were followed.

Ms. Christie stated that if she knew for a fact that Comcast would be here next year to control the system, at some point the whole entire county would be upgraded; however, Comcast may not be in Palm Beach County next year at this time. She suggested that the Town may want to wait and see who the provider at that time would be, and then present them with the results of the survey in order to ascertain the needs of the Town. She confirmed that any existing agreement reached between Comcast and the Town would be honored by a new company taking over the system.

Mr. Jakubiak stated that the very least he would recommend at this time was that the Town Council approve Phase 1, at a cost of \$10,000.

Councilman McDonald made a motion to accept the recommendations of Mr. Jakubiak to pursue Phase 1, at a cost of \$10,000 to be designated from the General Contingency Fund, including looking into the feasibility of the Town owning its own cable system. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

The workshop included in Phase 1 was tentatively set for July 15, 1999, at 10:00 A.M. Mr. Jakubiak indicated that he would confirm the date with Attorney Miller.

b. Failure to Update Equipment and Services to Town Residents

Mr. Al Levenson, Co-Chairman of the Citizens Association addressed the Town Council, reading a letter from the Citizens Association expressing concern with the current cable system, and requesting an upgrade from 550 MHZ to 750 MHZ.

2. Request by Mr. Theodore Fogg, 146 Via Del Lago, for the Town to Join the Vedado Neighborhood Association and the City of West Palm Beach in their Lawsuit Regarding PBIA Interconnect

Mayor Ilyinsky gave assurance that Mr. Fogg was not present to suggest that money be raised to move the airport, and had come forward to discuss the I-95 interconnect and its impacts.

Mr. Fogg, 146 Via Del Lago, addressed the Town Council, stating that he was the representative of a small group of eight Town residents who had met monthly for years to track the methodical and aggressive expansionist pursuits of the airport authority. He noted that he was not a member of the group that filed suit against the airport, and was not opposed to the airport, however, he strongly believed that Palm Beach would be negatively impacted by the current plans of the airport. He stated that he believed that this was a Town issue, not only because it affected residents between Clarendon and Southern Blvd., but because if the plans went through as they were developed there would be flights over many parts of Palm Beach. He stated that the Vedado Neighborhood Association lawsuit was filed in State Administrative Court in Tallahassee by a very capable, experienced, local environmental attorney, Michael W. Morell, against the Florida Department of Transportation (FDOT), and the South Florida Water Management District (SFWMD). It alleged violations of the Florida Administrative Procedures Act with regard to water retention ponds in the Vedado area. The interconnect came to light in 1995, and was estimated to cost \$54 million at that time, for which funding had been received from the Federal Government. The current estimate of the cost is \$150+ million. All of this money and program is based on the FDOT estimate that air traffic at PBIA will increase almost threefold in the next 20 years. He emphasized that no one thinks that the airport would grow that much.

Mr. Walter Kirkbride, resident, addressed the Town Council, and commented that he was concerned about the air traffic in the future and noted that the current airport was built as a result of data that ended in 1988-89. The airport had been built based upon a growth projection of over 7%. Since that time, there had been airport growth of approximately 2%. There is, therefore, excess capacity at the airport in terms of passenger utilization of approximately 40%. If the airport continued growing at 2% per year for the next 20 years, there would be no need for additional airport capacity over that time; in addition only 40% of the anticipated cargo capacity was being used. He expressed concern regarding three documents published by Ricondo Associates regarding airport growth. He submitted that these documents indicate that taxpayers would finance the growth, without getting any return, other than more airport traffic.

Mr. Fogg commented that the year to year numbers on the charts for total airport operation and cargo had been steadily falling. He explained that the current status of the lawsuit against FDOT and SFWMD was that they had been stayed from issuing permits and letting contracts on the interconnect project until this case was resolved. The City of West Palm Beach had intervened in the lawsuit, and

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

had retained counsel in Tallahassee. He maintained that the County was planning for expansion, and had purchased land in the area for that purpose. He submitted that the execution of the plans by the airport could not occur without damaging the quality of life in Palm Beach. He requested that the Town, on behalf of its residents, act to support Mr. Morrell through the Vedado Neighborhood Association, so that he may continue this action.

In response to the query of President Smith, Mr. Fogg explained that concurrency requirements for the expansion would require the additional roadways. He introduced Attorney Morrell.

Attorney Michael Morell, representing the Vedado Neighborhood Association in its action against FDOT and SFWMD explained that the judge in Tallahassee had released jurisdiction of the case to the South Florida Water Management for a very limited purpose, to obtain additional written comments from the public and to give members of the public an opportunity to either intervene in the Vedado lawsuit, or to file their own lawsuit, which would then be consolidated with Vedado. The opportunity to submit written comments officially closed on May 17th, however, this Thursday the South Florida Water Management District would have a public meeting in which they would take up the comments, and would open them up for comments from the public. At the end of that meeting SFWMD would decide whether to re-consider the decision made last January in violation of citizens' rights. He explained that the judge had told them that if they admitted the error of their ways that they were to report back to Tallahassee so that the permits could be dismissed altogether, or to return to West Palm Beach for yet another hearing. Mr. Morell explained that what started out as a problem with a storm water pond was rapidly escalating into a safety issue that was unifying all of the neighborhoods in West Palm Beach located in the glide path. The pond was located 4,000 ft. from the end of the runway, and directly in the glide path. The FAA recommended that facilities attracting wildlife be located five statute miles away from the glide path. He noted that he was unaware of any study that had been done to determine whether the facility would attract wildlife. He submitted that the design changes were cause to direct the Federal Government to order full environmental impact studies. Some of the additional impacts that would affect Palm Beach were water quality impacts; the project was located in the C-51 basin, and the pollutants that would collect in the bottom of the pond could leach into the C-51 and further degrade the Lake Worth Lagoon.

Mr. Morell estimated that a petition to intervene in this matter, which could be filed up until 20-days before the hearing in July, and to assist the City of West Palm Beach, Vedado, and any other petitioners could be done through the trial stage for approximately \$7,500. He explained that what was needed in the case was expert witnesses, which he estimated would require an additional \$15,000, which he hoped would be partially covered by the City of West Palm Beach. The City of West Palm Beach had authorized their Commission to allow them to file a lawsuit on Friday that would allow them to come in as a full independent party on their own, so their rights would no longer be merely just derivative to Vedado's. Should the Town of Palm Beach wish to come in with full independent status, it could be done on Friday, or the Town could intervene up until 20 days before, which would be July 7th.

President Smith commented that the cost was a bargain, considering the impact that this would have on the quality of life in the Town of Palm Beach, and recommended the amount of \$7,500.

President Pro-Tem Wyett approved \$7,500 to come from the General Fund Contingency. The motion was seconded by Councilman McLendon.

Town Attorney Randolph advised that he would discuss the intervention dates, and determine what was involved.

Councilman McDonald commented that the issue was now a legal issue, and that it had originally started out as a political issue, since the Palm Beach County Commissioners had pushed the project, which should bring to mind the necessity of electing County Commissioners County-wide, instead of by district, as developmental interests influenced the Commissioners to approve the project in the first place.

Mr. Fogg commented that there were a lot of issues involved, such as safety and water quality, and that he hoped that the application for a variance would have to be re-submitted, which would delay things for approximately 18-months; a new economic impact study would delay things for up to 3 years. Either of those results would enable going to the State level to see if there was a better use for the money for roads in Palm Beach County, other than the proposed interconnect. He noted that he did not represent Mr. Morell or the Vedado Neighborhood Association, and was present as a citizen of Palm Beach who had worked with a group of residents privately to track these issues at the airport, and was concerned about the plans for a cargo operation.

President Pro-Tem Wyett commented that there was also a question of whether the Town should consider filing a lawsuit, much like the City of West Palm Beach did.

Town Attorney Randolph replied that there were apparently two actions discussed; one, a separate action that needed to be filed by Friday, and the other an intervention, which would have to be filed sometime in July. He explained that he did not know how far the \$7,500 would go in regard to either action, and that he would contact Mr. Morell to determine what was involved, and whether special counsel was needed in this regard.

President Pro-Tem Wyett suggested that perhaps Representatives Shaw and Foley should be contacted regarding this matter.

On roll call the motion carried unanimously.

3. Request by Town Attorney Randolph of Jones, Foster, Johnston & Stubbs, P.A., for Increase in Hourly Rate from \$160 to \$175, Effective July 1, 1999

President Pro-Tem Wyett moved approval of the request by Town Attorney Randolph for an increase in his hourly rate from \$160

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

to \$175, effective July 1, 1999. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

At this time, Jane Skittone, newly appointed Finance Director, appeared at the Town Council Meeting, as requested earlier in the meeting, to be introduced to the Town Council members.

4. Request by Public Works Director Dusey for Funding from the General Fund Contingency for Worth Avenue Sidewalk Repair Between South County Road and Cocanut Row

Public Works Director Dusey referred to his memorandum of May 14, 1999, reporting that there were some sidewalks in need of repair on Worth Avenue, which had been budgeted for the next year. The Worth Avenue Association had requested that the repairs be done this year, and Mr. Dusey suggested that the funds be appropriated in the amount of \$24,000 from the General Fund Contingency so that the repairs could be made this year.

Councilman McLendon moved approval of the appropriation of funds in the amount of \$24,000 from the General Fund Contingency for sidewalk repair work on Worth Avenue. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

5. Authorization for Town Council President to Execute an Amendment to FDEP Contract No. 97PB3, Implementation of the Lake Worth Inlet Management Plan

Town Engineer James Bowser reported that in the FY98-99 budget the State Legislature had appropriated \$1.13 million to Palm Beach for projects to further the implementation of the Lake Worth Inlet Management Plan. He requested that the Town Council President be authorized to execute amendment number one to FDEP Contract No. 97PB3, which would authorize work on several Town projects as detailed in his memorandum to Town Manager Doney of May 28, 1999.

President Pro-Tem Wyett moved approval of authorization for Town Council President Smith to execute amendment number one to FDEP Contract No. 97PB3. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

6. Appointment of Alternate Member to Represent the Town on the Palm Beach Countywide Beaches and Shores Council

Town Manager Doney referred to his memorandum dated June 3, 1999 to the Town Council, wherein he recommended that Public Works Director Dusey be appointed as the alternate member to represent the Town on the Palm Beach Countywide Beaches and Shores Council.

President Pro-Tem Wyett moved approval of the appointment of Public Works Director Dusey as alternate member of the Palm Beach Countywide Beaches and Shores Council. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

7. Request to West Palm Beach Mayor Joel Daves to Appoint a Representative of the Town to Serve on the West Palm Beach Water Catchment Area Advisory Committee

Town Manager Doney referred to his memorandum dated June 3, 1999, to the Town Council, wherein he recommended that the Town Council approve a request to West Palm Beach Mayor Daves that President Smith be appointed the designated representative of the Town of Palm Beach on the West Palm Beach Water Catchment Area Advisory Committee.

Councilman McLendon moved approval of the recommendation of Town Manager Doney to request that Mayor Daves appoint President Smith as the designated representative of the Town of Palm Beach on the West Palm Beach Water Catchment Area Advisory Committee. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

XV COMMENTS OF THE TOWN COUNCIL MEMBERS

There were no comments made at this time.

XVI DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be testifying in the following matters.

A. Appeals

1. Appeal of the Architectural Commission's Decision of March 24, 1999, Concerning 3 Golf Road by Mr. Ronald K. Kolins (*Deferred from April 13, and May 11, 1999*) - **Request for Withdrawal per letter dated June 3, 1999, from Mr. Ronald K. Kolins**

This item was withdrawn from the Agenda under Item VI. "Approval of the Agenda."

A. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. VARIANCE NO. 11-99 - Alison Reed, 1520 North Ocean Blvd.; located in the R-B Zoning District. To allow construction of a two-story addition providing a 19' street side yard setback in lieu of 30' required. (*Approved 1st story portion of this request at the May 11, 1999, Town Council meeting and deferred the 2nd story portion to June 8, 1999*)

Ex-parte communication was declared by Councilman Shaw with Attorney Brindell and Ms. Reed at the property in question.

Attorney James Brindell, on behalf of Alison Reed, addressed the Town Council, stating that the applicant had re-evaluated the second story addition of 366 sq. ft.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: should be designed in a manner which most closely complies with the Code; hardship issue needed to be addressed; Town Manager requested additional information on the justification for the variance.

President Pro-Tem Wyett moved approval of the second story portion of Variance No. 11-99, with the condition that the building lines of the house be aligned squarely as demonstrated on the plans; the hardship being that the house pre-dated current zoning; its peculiar position to the land; the variance was minimal; and the necessity of making the house more livable. (first story portion variance had been approved at May 11, 1999, Town Council meeting). The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was temporarily out of the room.

2. SITE PLAN REVIEW NO. 10-99 with Variances - Arthur Galiffa, 125 Via Vizcaya; located in the R-A Zoning District. To allow construction of a residence on a 11,295 sq.ft. lot in lieu of 20,000 sq.ft. required; to allow a lot width of 111' in lieu of 125' required, and a lot depth of 100' in lieu of 125' required; to allow a 21' west street side yard setback in lieu of 35' required; and, to allow some roof sections to extend beyond the height limiting plan and not meet the building height plan setback. (*Deferred from May 11, 1999*)

Attorney Peter Broberg, on behalf of Mr. and Mrs. Galiffa, 125 Via Vizcaya, addressed the Town Council, stating that the applicant was seeking approval of two minimal variances. He explained that the lot was small, and exhibited photographs and the site plan of the proposed construction on the property in question to further discuss the variance requests.

Director of Planning, Zoning & Building Robert Moore stated that the property was in the R-A District, and there was not a hardship regarding the variance request for new construction.

President Pro-Tem Wyett commented that he believed there was a hardship, as the property was on a corner, and to deny the request would require someone to build a very small house on the property. He mentioned that the current structure was not very attractive, and had not been very saleable.

In response to the query of Councilman McDonald regarding how much the house would have to be diminished in order to require no variances at all, Architect Harold Smith explained that the same sized house could be built without any variances if it was boxed into the back corner of the property, and the pool would then be located on the street side of the property.

Councilman McDonald moved denial of Site Plan Review No. 10-99 with variances. President Smith passed the gavel and seconded the motion. On roll call the motion to deny failed 2/3, with Councilman McDonald and President Smith casting affirmative votes; President Pro-Tem Wyett, Councilman McLendon and Councilman Shaw casting dissenting votes.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Councilman Shaw then made a motion to approve Site Plan Review No. 10-99 with variances, citing that the hardship was the small lot in the R-A Zoning District, that the property had two street fronts, that the house should not be made smaller than the other houses in the area simply to accommodate a sub-standard lot. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 3/2, with Councilman Shaw, President Pro-Tem Wyett, and Councilman McLendon casting affirmative votes; President Smith and Councilman McDonald casting dissenting votes.

New Business - Minor

3. SITE PLAN REVIEW NO. 11-99 - Westrend Development Inc., 224 Barton Ave.; located in the R-B Zoning District. To allow construction of a residence on a lot 75' wide in lieu of 100' minimum required.

Ex-parte communication was not declared by any Council member.

Director of Planning, Zoning & Building Robert Moore stated that the project was submitted for the under sized lot only, and that the house met all other requirements of the Zoning Code.

Councilman McDonald moved approval of Site Plan Review No. 11-99. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

New Business - Major

4. VARIANCE NO. 9-99 - Robert Deziel, Trustee, 311 Brazilian Ave; located in the R-C Zoning District. To allow construction of a two-story guest house/garage providing a 5' side yard setback in lieu of 10' required, and a 7.5' rear yard setback in lieu of 15' required. To allow a two-story addition to the main residence providing a 7.9' west side yard setback in lieu of 10' required. - **Request for Deferral to July 13, 1999, per letter dated May 26, 1999, from Ms. Maura A. Ziska**

This item was deferred earlier in the meeting under Item VI. "Approval of the Agenda."

5. VARIANCE NO. 13-99 - Thomas Turchan, 211 Eden Rd.; located in the R-B Zoning District. To allow construction of a one and two story addition to a nonconforming residence. To allow a 10' west side yard setback in lieu of 12.5' required for a one-story addition, and to allow a 30.6% lot coverage in lieu of 30% maximum allowed for a two-story house.

Ex-parte communication was declared by President Pro-Tem Wyett with Attorney Brindell.

Attorney James Brindell, on behalf of Thomas Turchan, addressed the Town Council, stating that there were two basic purposes for the re-design; one was to reallocate some of the interior spaces; secondly a non-conformity would be eliminated in that there was currently a one-car garage, and the proposal was to build a two-car garage, with an increase in landscaping. Mr. Brindell displayed graphic exhibits of the property in question for review and discussion.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: can be designed to conform to Code; Building Department: no objection to garage in line with existing side yard, minimal variances for the lot coverage; Town Manager: requests additional justification for the variance.

Architect Jacqueline Albarran de Mendoza explained that the current garage was a 1- 1/3 space with a one-car garage door. A very small amount had been added on the site plan to make the garage big enough for two cars.

Mr. Frank, Planner/Projects Coordinator, who had made staff comments under Comprehensive Plan, agreed with Architect Albarran de Mendoza.

Architect Albarran de Mendoza commented that several months ago she had spoken with the neighbor to the west, Mr. Heiligenstein, and he had said that he had no objection to a second story as long as he could keep the privacy of the views from that second story into his yard. She explained that she had placed only closets and bathrooms on that side, with very high sills, and small windows.

President Smith explained that a letter of objection had been sent from out of Town by Mr. Heiligenstein.

In response to the query of President Pro-Tem Wyett concerning a hedge on the west side of the property, Mr. Turchan, owner of 211 Eden Road, replied that the hedge on the west side was currently approximately 12 feet high, and that he did not believe anyone could see into the yard of Mr. Heiligenstein from the windows on the west side of the proposed construction, which were in closets and bathrooms.

Attorney Brindell commented that the windows would be reviewed by the Architectural Commission.

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999~~

President Pro-Tem Wyett moved approval of Variance No. 13-99, citing that the variance was minimal, that a nonconformity would be eliminated with the respect for the requirement for a two-car garage. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

6. VARIANCE NO. 14-99 - Brous Co. Florida Ltd., 150 Brazilian Ave.; located in the R-B Zoning District. To allow a height addition, up to 9.5' high, to the west property line wall in lieu of the 6' front yard maximum and the 7' side yard maximum height allowed.

Ex-parte communication was not declared by any Council member.

Attorney David Shaw, representing Brous Co. Florida Ltd., addressed the Town Council, stating that the hardship was due to the location of the property at 150 Brazilian Ave., which was immediately to the east of a commercial parking lot, which was located to the immediate east of a commercial restaurant, and the hardship was due to the location and the adverse affect on the residential area of the commercial use of the adjoining property. He submitted a letter of support, which he read into the record, from Mr. Sidney Spiegel, a neighbor at 133 Brazilian Avenue

Director of Planning, Zoning & Building Moore gave the following staff comments: Staff determined that there was no problem with a 7' in the front yard, rather than 6', and that the rest should stay within 7', and that it would be a decision of the Town Council to determine whether 9.5' was appropriate, considering the circumstances.

President Pro-Tem Wyett moved approval of Variance No. 14-99, with the provision that the wall visible to the public be landscaped, so that eventually the landscaping would equal the height of the wall. The hardship was that the property was located to a commercial facility with an on-going valet parking service.

Mr. Mort Brous, owner, commented that he had discovered today that the parking lot was used legally by the restaurant as a valet parking lot, and that he was told that the restaurant was required to put hedges on their side.

The motion was seconded by Councilman McDonald.

Councilman Shaw pointed out that the hedge would be on the property of the restaurant, and he did not believe that should be a part of a condition of approval.

President Smith explained that if the restaurant property owner did not want a hedge on that side and would not maintain it, then it could not be made a condition of approval.

President Pro-Tem Wyett withdrew his motion.

Councilman McDonald moved approval of the wall at 9.5'. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

7. Modified SPECIAL EXCEPTION NO. 9-99 WITH SITE PLAN REVIEW - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; located in the R-A & R-AA Zoning District. Applicant has modified the previous application to change request from conceptual approval to a request for final approval to construct a pavilion (to replace tent) and add an underground parking structure on the east side of the proposed pavilion. In addition, applicant requests permission to maintain the tent from October to May each year until completion of the construction of the pavilion. *(Consideration of this item will also include consideration of the Traffic Management Plan, as requested at the April 16, 1999, Special Town Council meeting)*

This item was moved to the end of the Agenda earlier in the meeting under Item VI. "Approval of the Agenda."

8. SPECIAL EXCEPTION NO. 14-99 - Palm Beach Orthodox Synagogue, Robert E. List, Trustee, 120 North County Rd.; located in the C-TS Zoning District. To allow the operation of a 182-seat, synagogue in a space exceeding the 2,000 sq.ft maximum allowed in the C-TS Zoning District.

Ex-parte communication was declared by Councilman McLendon via a telephone call from Mrs. Herman.

Attorney Robert Deziel, representing the Palm Beach Orthodox Synagogue, addressed the Town Council, incorporating by reference the application submitted, as well as Exhibit "A" to such application, addressing all of the requirements for a special exception. He outlined the history of the current space being occupied by the synagogue, the proposed space that would be occupied, and exhibited a floor plan of the space in question. He explained that the uses would be for religious services, Sunday classes, and administration. He produced exhibits of the space in question, and discussed the intensity of use, parking, and the uses that would take place at the location.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police Department: address service vehicles and where general operation would be relating to servicing of the use; Fire Department: should comply with all safety codes; Comprehensive Plan: should look at potential service conflicts; Building Department: Town serving must be addressed, parking for service

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

vehicles must be addressed; Town Manager: concurs with staff comments.

In response to the query of President Smith concerning parking and a possible shared parking agreement, Mr. Deziel replied that a field survey had been conducted within one block of the area, and there were 173 public parking spaces: 1-hour parking from 9 A.M. - 6 P.M. = 142 spaces; 2-hour parking from 9 A.M. - 6 P.M. = 4 spaces; metered parking 24-hours per day = 9 spaces; parking by permit from 8 A.M. - 5-30 P.M. = 18 spaces. Membership coming to services would use metered parking, 1-hour and 2-hour parking. The Rabbi and administration would involve one or two people only; in addition, neighbors had offered shared parking arrangements, however, the synagogue had not taken them up on the offers in order to avoid requesting variances if they were not needed. He suggested that approval be granted today, and if a problem was encountered later a shared parking arrangement could be investigated.

President Smith replied that there were constant complaints that there was not enough parking in the area. She asked if the applicant had spoken to the owner of Chez Jean Pierre as to parking in that lot, or to Green's Drug Store, or to St. Edward's about parking in their lots?

Attorney Deziel responded that there had been offers for parking, however, the synagogue had not felt the need to accept any of the offers. He explained that very few permanent parking spaces would be needed, and offered that an agreement could be entered into to obtain 2-4 permanent parking spaces, however, he did not think that was necessary because of the low intensity of use.

President Smith pointed out that the Friday night services from 7:30 - 8:30 P.M. would involve parking in competition with restaurants in the area, and at that time of night a shared parking agreement may be useful.

Attorney Deziel replied that St. Edward's had already offered their parking behind Green's Drug Store, however, the synagogue did not believe that it was needed at this time.

Councilman McLendon asked if other civic organizations would be using the synagogue space?

Attorney Deziel responded that the intention was for use as a house of worship, and that it was not intended to be a hall to be rented out to other people. He explained that there was not a festival hall in the facility for celebrations after religious ceremonies, and social celebrations would take place off-site.

Councilman McDonald asked why 182 seats were needed, since the average seasonal attendance was 100?

Attorney Deziel responded that the applicant was entitled to that number, however, there were some occasions when there may be more than 100 attendees, and the facility would accommodate them.

Councilman McDonald replied that his concern was not special occasions, but the possibility that the membership may grow to 150-160, which would dramatically increase traffic, since there was no parking arrangement at this point.

Attorney Deziel offered to come back before the Town Council in one year to see how the arrangements had worked out during the season.

Director of Planning, Zoning & Building Robert Moore commented that the offer made by Attorney Deziel was an excellent idea, and would address some staff concerns as well. He noted that houses of worship historically provided for civic functions to be held, which was permitted under the Town Zoning Ordinance. He suggested that the use of the space could be limited to temple-related events, and not for community service related events, for a one year trial period.

Attorney Deziel suggested that the Rabbi and Dr. Gelfand use their judgement relative to civic events occurring there over the next year, and return in one year to re-evaluate the situation.

President Pro-Tem Wyatt moved approval of Special Exception No. 14-99, with the conditions that the applicant come back to the Town Council in one year for re-evaluation, and that the space would not be used for anything other than synagogue-related events for the period of one year, because of the concerns of the intensity of use and the traffic impact in the area. The motion was seconded by Councilman McDonald.

In response to Councilman Shaw, Attorney Deziel explained that there would be approximately 5 vehicles parking on Sunday through Friday mornings; approximately 20 children would be dropped off on Sunday morning, which would entail 10-20 vehicles. He stated that he did not see a vehicular problem.

On roll call the motion to approve with conditions carried unanimously.

9. SPECIAL EXCEPTION NO. 15-99 WITH SITE PLAN REVIEW & VARIANCES - 375 S. County Association, 375 S. County Rd.; located in the C-TS Zoning District. To allow the restaurant to relocate 50 of the 150 seats outdoors. To allow a decrease in required landscaped open space by 48 sq.ft.

This item was deferred to the July 13, 1999, Town Council meeting under Item VI. "Approval of the Agenda."

10. SPECIAL EXCEPTION NO. 16-99 WITH SITE PLAN REVIEW & VARIANCES - Frank Chopin, Trustee, 390 Wells Rd & 345 N. Lake Way; located in the R-B Zoning District. To allow construction of a residence on a lot

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

exceeding four times the minimum lot size in the R-B Zoning District. To allow a 28.5' building height in lieu of 22' maximum allowed, and to allow a 32' in lieu of 30' overall building height.

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Chopin to review the plans; by Councilman Shaw via a meeting with Attorney Chopin and Architect Smith to go over the application and plans; by Councilman Wyatt with Attorney Chopin; by Councilman McDonald via a telephone conversation with Attorney Chopin on the merits of the application.

Director of Planning, Zoning & Building Robert Moore clarified that Attorney Chopin and Architect Smith had met with him, as required, prior to submitting their application, and an error had surfaced on the computation of the overall height, which would now require two or more variances. He had requested that Attorney Chopin make his full presentation today, and that the overall height variance be re-advertised.

Attorney Frank Chopin addressed the Town Council, explaining that he was both trustee and the legal title holder of the property, as well as the attorney. He commented that Town staff had been very cooperative in working with the applicant, and that the re-advertisement would be accomplished, as suggested by Mr. Moore, however, because the same issue was very likely to come up again, he wished to clarify the issue. He stated that he did not believe a point of measurement variance was needed for the cubic content ratio, and he maintained that the Town was incorrect on how the calculations were made for cubic content ratios in this case, explaining his comments in detail.

Attorney Chopin explained that the applicant wished to build a single family home, and produced exhibits of the proposed plans, requesting a variance that would allow the architectural flexibility to build a neoclassical home. One variance was being requested to exceed the 22' building height by 4', and the other was a request to add approximately 2' to the roof, increasing the roof height from 8' to 10', and consequently the overall building height by the corresponding 2'. Attorney Chopin explained the need for the requests in great detail.

Director of Planning, Zoning & Building Robert gave the following staff comments: Police & Fire Departments: no comment; Comprehensive Plan: seems excessively to exceed code requirements for R-B District, also seems to exceed R-A requirement; Public Works: owner to abandon all conflicting utility easements, Lake Way encroachments on private property shall be dedicated to Town as road right-of-way, meet all Public Works Department standards for lot development; Building Department: variances are being studied this zoning season, and some of the issues discussed by Attorney Chopin were under study; overall height needed to be re-advertised, and subsequently a point of measurement will be needed to address the cubic content. Mr. Moore addressed the site plan review and special exception, explaining that the acquisition and putting together of the two properties had resulted in 60,000 square feet. There had been two cases in Town that had prompted the concern of the Council to enact this into the Zoning Ordinance (Clarendon property and George Matthews property) Both cases were dealing with Zoning District classifications that were not as great as what the combined property was, so the Council wanted to consider these types of properties and how they would affect the surrounding neighborhood. That was the purpose of the Site Plan review with the special exception: how this will impact the surrounding neighborhood. Mr. Moore noted that on the issue of the variances themselves, Attorney Chopin had a disagreement on some Code interpretation, however, the variances were needed, or Attorney Chopin could challenge the interpretation under an appeal.

Councilman Shaw moved approval of Site Plan portion of Special Exception No. 16-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman McLendon moved approval of a variance for 4' from the 22' maximum allowed to allow a building height of 26', to include the conditions stated by the Public Works Department, with the hardship being the typography of the land. President passed the gavel and seconded the motion. On roll call the motion carried unanimously.

11. SITE PLAN REVIEW NO. 12-99 WITH SPECIAL EXCEPTION & VARIANCES - 179 Corp. Inc., 420 Royal Palm Way; located in the C-OPI Zoning District. Applicant proposes to construct a 9,960 sq.ft. (GLA), 40 parking space, office building (modifying a prior Site Plan Approval). Special Exception requested to allow a 3-story office building. Variances are requested to allow 63.56% lot coverage in lieu of the 25% maximum allowed; to allow 14.65% landscaped open space in lieu of 30% minimum required; to allow two undersized parking spaces; to allow a 4'2" side yard setback in lieu of 5' required; and to allow a 171' building length in lieu of 150' maximum allowed.

Ex-parte communication was not declared by any Council member.

Attorney Ron Kolins, on behalf of the applicant, recalled that two months ago the applicant had been granted approval for a building of two-stories, and the Town Council had determined that the building did not have the character desired, and the applicant had been requested to come back with a larger building. The applicant had agreed to do that, and commissioned the architect to prepare a three-story building that would be more consistent in size and character with the buildings on either side of it, and to be more consistent with the character of the street. In order to build the three-story building, the variances being requested today were required. Attorney Kolins displayed exhibits of both the former and current plans for the office building in question.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police & Fire Departments: no comments; Comprehensive Plan: too much density - should meet codes, questioned hardship; Town Engineer: Meet FDOT and Town drainage requirements; do not plant or encroach upon utility easement; Building Department: hardships must be addressed; Town Manager: concurs with staff comments.

Attorney Kolins commented that in order to complete the building, a parking structure was necessary, and the portion of the building that was an office building was within size limitations lengthwise. He noted that the Architectural Commission would also have

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

to approve the plans.

Councilman McDonald stated that he preferred the building that was approved last month; he stated that he considered the current building plan too large and did not like the appearance.

President Pro-Tem Wyett stated that he disliked the proposed building plan, and suggested that another plan be presented to provide more space in the rear.

Councilman McLendon stated that he preferred to get the parking off the street, as indicated in the newly proposed plan.

Attorney Kolins suggested that the applicant return to the Town Council next month with a modification of the architecture. He defined the problem areas as the parking at the rear of the building and its impact on nearby residents, and the elevation of the structure.

After further discussion concerning the parking, landscape screening, and the impact on the townhouses on Brazilian Avenue, Attorney Kolins stated that commitment would be made to making the landscaping very thick and opaque as possible. He offered that the applicant would return to the Town Council next month with a new elevation, and would try to solve the parking in a satisfactory manner.

President Pro-Tem Wyett moved deferral of Site Plan No. 12-99 to the July 13, 1999, Town Council Meeting.. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was temporarily out of the room.

12. FLOOD VARIANCE NO. 1-99 - Martha Bedford, 216 Bahama Lane; located in the R-B Zoning District. To allow construction to exceed 50% of the value of the house with a lowest finished floor elevation of 7.09' NGVD in lieu of 7.5' minimum required.

Ex-parte communication was not declared by any Council member.

Director of Planning, Zoning & Building Robert Moore stated that a surveying error had been identified after the permits were issued; staff had no objection and FEMA allowed the granting of the variance between 7-7.5.

President Pro-Tem Wyett moved approval of Flood Variance 1-99. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

C. Other

1. Reconsideration of Conditions in the Mitigation Plan outlined in the Town's Letter dated November 25, 1998, for FH of Palm Beach, Inc. commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue (*Deferred from April 13, 1999*)

Attorney Ron Kolins, representing various citizens who had been impacted by 251, advised that discussions had taken place between them and the owner of 251, and an approach had been suggested for deferral of consideration of this matter until the August Town Council Meeting. He explained that during that two month period the 251 Club and their lawyer would take the initiative of meeting with various representatives of the Palm Beach Hotel, the Association of the residents there, to put together a plan to construct a wall that would hopefully mitigate or ameliorate the problems of the neighboring property owners.

President Pro-Tem Wyett moved approval of deferral of reconsideration of the conditions of the Mitigation Plan for 251 Sunrise Avenue until the August Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Consideration of Draft "Request for Qualifications" Notice Regarding a Neighborhood Design Guide Manual, as Discussed at the May 11, 1999, Town Council Meeting

Director of Planning, Zoning, & Building Robert Moore advised that a draft request for a proposal for a prototype for the Neighborhood Design Guide Manual for the R-B Zoning District had been assembled, with the requests coming back to Town staff by July 6, 1999. He requested approval of the draft submitted so that staff could begin the process.

Councilman Shaw moved approval of the draft request for a proposal for a prototype for the Neighborhood Design Guide Manual for the R-B Zoning District.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

President Smith suggested that the deadline for proposals to come back to Town staff should be July 20, 1999.

The maker of the motion accepted that amendment, moving approval of the draft request for a proposal for a prototype for the Neighborhood Design Guide Manual for the R-B Zoning District, with the proposals coming back to Town staff by July 20, 1999. Councilman McLendon seconded the motion. On roll call the motion carried unanimously.

At this time Item XVI. B. 7 - Modified Special Exception No. 9-99 with Site Plan Review - The Mar-a-Lago Club, Inc., was heard.

7. Modified SPECIAL EXCEPTION NO. 9-99 WITH SITE PLAN REVIEW - The Mar-a-Lago Club, Inc., 1100 S. Ocean Blvd.; located in the R-A & R-AA Zoning District. Applicant has modified the previous application to change request from conceptual approval to a request for final approval to construct a pavilion (to replace tent) and add an underground parking structure on the east side of the proposed pavilion. In addition, applicant requests permission to maintain the tent from October to May each year until completion of the construction of the pavilion. *(Consideration of this item will also include consideration of the Traffic Management Plan, as requested at the April 16, 1999, Special Town Council meeting)*

Attorney Ray Royce, representing the applicant, addressed the Town Council, stating that discussion would begin with the cabanas that had been approved at the lat meeting. Revisions on the conditions, drafted by Town staff, to be included in the Declaration of Use Agreement, had been sent to Town Attorney Randolph. Lengthy discussion then took place regarding the language in the conditions, which were clarified as follows:

The Town Council approved the following language from a list of items drafted by the town staff

- aa. **The above conditions were designed to consider and protect the quality of life surrounding Town residents and for the public interest of Palm Beach. Future Councils are urged not to eliminate any of these conditions unless such change is agreeable to the abutting residents or urgent circumstances justify the change.**

President Pro-Tem Wyett moved approval of the first sentence only, with all other language in "aa" being deleted. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

- z. **The above conditions will run with the land and are for the benefit of the Town and its residents and property owners.**

President Pro-Tem Wyett moved approval of Item Z with language as follows: *The above conditions will run with the land.* The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

- v. **The beach property improvements (other than the bulkhead) should not be started until the temporary middle bridge is completed. The construction should be limited to occur only between May 1st and December 1st so that construction traffic does not negatively impact the segments of South Ocean Boulevard and the Southern Boulevard Bridge adjacent to Mar-a-Lago during peak season. However, requests for the undertaking of any major construction activity at any time of the year (including demolition) east of A1A shall be brought before Town Council, accompanied by plans and other pertinent supporting information, for its review and approval, as is the case with any other construction project in the Town.**

President Pro-Tem Wyett moved approval of Item V as written. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

- q. **All air conditioning equipment shall be within the confines of a building. There shall be no air**

conditioning equipment within the north or south setbacks.

Regarding Item Q, President Pro-Tem Wyett moved approval of the language as stated below by Mr. Moore. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

ALL AIR CONDITIONING EQUIPMENT SHALL BE WITHIN THE CONFINES OF A BUILDING. THERE SHALL BE NO AIR CONDITIONING EQUIPMENT WITHIN THE NORTH OR SOUTH SETBACKS. EQUIPMENT SHALL BE BAFFLED AS TO PROVIDE NO DISTURBANCE TO THE NEIGHBORS.

- b. Councilman Shaw moved approval of Item b with the language as follows. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

SUBSTANTIAL LANDSCAPING WILL BE PLACED AND PERMANENTLY MAINTAINED BY APPLICANT BETWEEN THE NORTH AND SOUTH BUILDINGS ON THE ONE HAND AND, ON THE OTHER HAND, EACH RESPECTIVE PROPERTY LINE WITH THE ADJACENT NORTH AND SOUTH PROPERTIES. FINAL LANDSCAPING PLANS WILL BE MADE AVAILABLE TO BOTH OF THE PROPERTY OWNERS TO THE NORTH AND SOUTH OF THE SUBJECT PROPERTY FOR THEIR REVIEW AND INPUT REGARDING THE AREA BETWEEN THE CLOSEST BUILDING AND THEIR PARTICULAR PROPERTY LINE.

- l. THE TOWN COUNCIL APPROVED THE FOLLOWING LANGUAGE:

President Pro-Tem Wyett moved approval of item l with the following language. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

AMPLIFIED MUSIC OR AMPLIFIED SOUNDS OF ANY KIND SHALL BE PROHIBITED. NO CONCERTS SHALL BE HELD ON THE BEACH PROPERTY AT ANY TIME.

- m. THE TOWN COUNCIL APPROVED THE FOLLOWING LANGUAGE:

President Pro-Tem Wyett moved approval of the following language for item m. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

SCHEDULING OF CLUB EVENTS (BARBECUES, CLAM BAKES, COOKOUTS) SHALL BE DONE IN COOPERATION WITH THE BATH AND TENNIS CLUB. THERE SHALL BE NO MORE THAN SIX (6) EVENTS, OCCURRING NOT LESS THAN ONE MONTH APART. SUCH EVENTS MAY EXTEND BEYOND SUNSET, BUT NOT LATER THAN 10:00 P.M. AND SUCH EVENTS MAY NOT COINCIDE NOR BE SCHEDULED IN CONJUNCTION WITH ANY OTHER EVENT BEING HELD AT THE CLUB. NO ACTIVITY MAY BE CONDUCTED EAST OF THE BULKHEAD.

- p. THE TOWN COUNCIL APPROVED THE FOLLOWING LANGUAGE:

President Pro-Tem Wyett moved approval of item P as follows. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

THE OVERALL HEIGHT OF THE TALLEST STRUCTURE SHALL BE NO HIGHER THAN FOUR FEET (4') BELOW THE OVERALL HEIGHT OF THE RESIDENCE TO THE IMMEDIATE NORTH NOTWITHSTANDING ANY DIFFERENCES IN POINT OF MEASUREMENT.

- c.,d.,e. THE TOWN COUNCIL APPROVED THE FOLLOWING LANGUAGE AS STATED BY MR. ROYCE AND UNDERLINED IN MR. KOLINS' DOCUMENT:

Councilman McLendon moved approval of items c., d., and e., with the following language. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

- c. *LANDSCAPING MATERIALS OVER SIX FEET IN HEIGHT WILL NOT BE INSTALLED EASTWARD OF THE EAST END OF THE NORTHERN BUILDING.*
- d. *AT THE EXPENSE OF MAR-A-LAGO CLUB, A STRUCTURAL ANALYSIS WILL BE PERFORMED ON THE NORTHERN NEIGHBOR'S PROPERTY WALL. THE STUDY WILL DETERMINE FEASIBILITY OF INCREASING THE HEIGHT OF THE WALL TO A MAXIMUM HEIGHT OF TEN (10) FEET FROM THE PREVAILING GRADE. IF THE RESULTS OF THE FEASIBILITY STUDY INDICATE THAT THE EXISTING WALL CAN BE INCREASED TO A HEIGHT OF TEN (10) FEET FROM THE PREVAILING GRADE, THE MAR-A-LAGO CLUB SHALL APPLY FOR A VARIANCE TO INCREASE THE HEIGHT OF THE WALL TO A MAXIMUM HEIGHT OF TEN (10) FEET, WITH STEP DOWNS AGREEABLE TO BOTH PARTIES. IF A VARIANCE IS GRANTED, THE CLUB WILL INCREASE THE HEIGHT OF THE WALL. IF IT IS DETERMINED THAT THE EXISTING WALL CANNOT BE INCREASED TO A HEIGHT OF TEN (10) FEET FROM THE PREVAILING GRADE, THEN THE MAR-A-LAGO CLUB SHALL APPLY FOR A VARIANCE TO CONSTRUCT THE WALL ON ITS PROPERTY. IF A VARIANCE IS GRANTED FOR THIS PROPOSAL, THE CLUB WILL BUILD THE NEW WALL ON ITS PROPERTY. IF REQUESTED BY THE ABUTTING OWNER, THE CLUB WILL DEMOLISH THE EXISTING WALL.*
- e. *ACCESS TO THE BEACH PROPERTY WILL ONLY BE BY WAY OF THE EXISTING TUNNEL. THIS SHALL INCLUDE DELIVERIES, EMPLOYEES, SERVICE WORKERS, SOLID WASTE REMOVAL, CONSTRUCTION WORKERS, MEMBERS AND THEIR GUESTS, INCLUDING ACCESS BY HANDICAPPED OR PHYSICALLY CHALLENGED INDIVIDUALS. RAMPING AND/OR OTHER IMPROVEMENTS TO THE ENTRANCES TO THE TUNNEL SHALL BE CONSTRUCTED AS NECESSARY TO FACILITATE GENERAL SERVICING OF THE BEACH PROPERTY AND TO COMPLY WITH ADA REQUIREMENTS. PARKING OF PRIVATE VEHICLES ON THE BEACHFRONT PROPERTY SHALL BE PROHIBITED. THERE SHALL BE NO DROP OFF POINT AT THE BEACHFRONT PROPERTY WHERE PERSONS CAN ALIGHT FROM OR ENTER PRIVATE VEHICLES.*

Discussion now took place regarding the Pavilion Building. Attorney Royce clarified that the request had been changed to "final approval" rather than "conceptual" because approval had been received from the National Trust for Historic Preservation, and that approval was attached to the application. He requested that the modified application be made part of the record, as well as the resume of Joseph Pollack, Jr. Professional Traffic Engineer, the traffic management plan, the resumes of those experts that had testified on April 15, 16 and 20 (Mr. Skokowski, Mr. Kilday, Ms. Ziel and Mr. Blackman) and the record of those meetings as a part of the record of this meeting, and the resumes of those speaking on behalf of the Town of Palm Beach at those meetings as well. He explained that the proposal was to build a pavilion building to replace the current tent.

Mr. Wes Blackman, Director of Projects at the Mar-a-Lago Club, addressed the Town Council, stating that final approval had been received from the National Trust for Historic Preservation regarding the pavilion building. He explained that the building was designed to replace the temporary tent that was currently on the property, and would house special events. He exhibited an overall master plan, which included the pavilion building at 11,100 square feet, with a total number of theater seating of 1200. He noted that the current tent was not soundproof, nor weather proof, and maintained that the pavilion building would be a beautiful addition.

Mr. Blackman advised that the proposed traffic management plan placed safeguards for different sizes of events, categorized into four different scenarios: 1) Events under 200; 2) Events from 200-399 (14% of all events); 3) Events from 400-750; 4) Events from 750 - 1,200. He explained that construction of the pavilion building would not be underway during this season; therefore, one complete season could be held implementing the traffic management plan before the pavilion building was opened and operating.

Testimony was heard from Mr. Kilday, Planner, who remarked that the Mar-a-Lago Club was consistent with the Comprehensive Plan of the Town, and discussed three critical items in the Plan, the land use element, the recreation element, and the historical element.

Testimony was heard from Mr. Hank Skokowski, who advised that the very detailed traffic management plan had been carefully reviewed. Traffic circulation and parking was located to the east of the proposed pavilion building, where there was currently surface parking. He noted that staff had suggested that the area could be considered for a parking structure, which was provided for in the amended application, adding additional parking to the site. The structure would be virtually unnoticed by anyone other than those attending events in the building. He advised that all other standards required in the Town Code had been met.

Attorney Royce explained that the tent would be left in place during the season until the pavilion building was built. He clarified that the traffic management program could be implemented with the tent in place, before the pavilion building was completed, so that the theories could prove that events could be handled in an appropriate manner without any adverse impact on the streets of the community.

President Pro-Tem Wyett commented that the traffic management plan had been received only a few days before the meeting, and the public had not had an opportunity to examine it; therefore, he suggested that the traffic management plan should not be discussed at this meeting.

Ms. Yvonne Ziel addressed the Town Council, stating that she had prepared the data collection for the traffic management plan.

Director of Planning, Zoning & Building Robert Moore stated that Mr. Philip S. Tokich, Principal Transportation Engineer of Frederic R. Harris, Inc., had reviewed the traffic plan, as well as Mr. William Brisson, of Adley, Brisson, Engman Planners & Economists, Inc., Assistant Police Chief Reiter, Fire-Rescue Chief Ken Elmore, and Town Engineer James Bowser.

Zoning Administrator Paul Castro pointed out that as part of the site plan review the pavilion met all of the land development

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

regulations related to setbacks, lot coverage, building height, and overall height. Palm Beach County had reviewed the land development proposal and had determined that based on the membership cap of 500, and the amenities being proposed, that the application met concurrency. In addition, the Town also determined that the proposal did meet concurrency, however, the applicant had been asked at the last Town Council meeting to present a traffic management proposal on site as well as coming into the site, and that plan had been presented, all with the assumption that the majority of the traffic would come in a one hour peak time frame. He noted that Mr. Tokich had identified that for events of 500 or less, the traffic was manageable with the proposed plan, however with events over 500 the traffic management plan had not yet been proven. He advised that staff had some concerns about how the kitchen facility directly to the west of the pavilion would function to serve the needs of the pavilion, and had also suggested a two-tiered parking structure to provide additional parking, which would require two variances for front and street side yard setbacks. Staff also recommended that there be some type of instrument that would provide that the wall surrounding the property screen the parking structure and remain in place in perpetuity, as well as that the tree line be embellished and remain in perpetuity.

Attorney Frank Chopin, representing the Preservation Foundation questioned Mr. Blackman as to the numbers of events that had exceeded the allowable attendance requirements, the increase in intensity of use and the concurrency question, and stressed that more information was needed before a decision to approve the application could be made. He read a letter from Mr. Schuler with concerns about the rights of the Bath & Tennis Club and its members.

At this time, Attorney Kolins offered that the remaining public comment and proceedings regarding this application be done on another day.

After discussion, the Town Council determined that a dinner recess would be taken and the meeting would be resumed afterwards to continue hearing public comments.

*****The dinner recess was taken at 9:10 P.M.*****

*****The meeting was reconvened at 10:25 P.M.*****

Attorney Doyle Rogers, representing Mr. Edward G. Watkins, 1067 South Ocean Blvd., addressed the Town Council, speaking in opposition to the Mar-a-Lago application. He referred to his letter dated June 8, 1999, with concerns regarding the project, and read same into the record.

Attorney Ken Graves, representing Mrs. Nancy DeMoss, addressed the Town Council in opposition to the Mar-a-Lago application, asserting that the club was far more than a private social club, and begged to be treated and monitored differently.

Attorney Ron Kolins, representing Mrs. Alyne Massey, addressed the Town Council, questioning why a tent that could accommodate 1,000 people was put up if there was a 390 limitation on number of attendees at an event? He addressed the question of concurrency, and maintained that there was no concurrency, as the proposals in the application changed the prior concurrency finding. He suggested that there would be an increase in traffic, and that the Town Council could not pass or approve the pavilion or the increase in the special event cap until the County had reviewed the traffic impacts and determined whether there was concurrency. He referred to his letter of May 6, 1999, written to George Webb, the Palm Beach County Engineer, soliciting the opinion of the County and its Traffic Division.

Mr. Martin Klein addressed the Town Council, speaking in favor of the Mar-a-Lago application.

Attorney Ray Royce responded to the comments made by Attorney Kolins regarding concurrency. He noted that a traffic management plan had been designed, and he urged that the applicant be given an opportunity to prove that it would work. He maintained that the applicant had presented a competent, substantial case, and urged that the pavilion building be approved.

In response to President Smith, Zoning Administrator Paul Castro addressed her query regarding concurrency, noting that his discussion with the County had entailed the membership of the Club, and the beach cabanas as they related to the Club, and not the beach; he had relayed the information that Town staff believed that beach cabanas were accessory to the Club, and not to the beach, and that those were amenities that would be associated with any similar club with similarly situated property. Regarding the tent, he explained that there had been a tent on the property on a temporary basis since 1996/97, and the conversation had been centered on the basic concurrency on membership, rather than basic concurrency on actual construction. He specified that assumptions of the County had been based on the 1996 study, and there had been no indication that the County was going to use any of his statements in determining traffic concurrency for the County.

Director of Planning, Zoning & Building Robert Moore commented that Mr. Tokich and Mr. Brisson had already determined that the Mar-a-Lago Club had met concurrency, based on the 1,008 membership. He further clarified that the 1,008 cap came from the original application, and that cap was reduced to 500, however, the Town required that the 252 parking spaces be kept in place, even though they had only 500 members.

Attorney Royce clarified that the County approved the project in 1996 for 1,008 members under their concurrency rules; they had not implied that the Town had approved 1,008 members.

Mr. Blackman displayed two presentation boards indicating the seating layouts in the proposed pavilion building; 408 seats for a dinner/dance scenario, and 576 seats for dining only.

President Smith commented that her concern was that the pavilion building was too big for the present cap on the membership, and too big for the cap on the attendance at special events, and that she had great concerns regarding traffic that had not been answered by the traffic management plan.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

In response to the concerns of President Pro-Tem Wyett as to traffic management outside of the walls of Mar-a-Lago, Ms. Yvonne Ziel replied that the plan would work, especially with the events of up to 750. The events held for over 750 people still needed to be tested, although it did work on paper. She stated that she would appreciate the opportunity to test it.

Attorney Rogers maintained that the Town Council should consider a moratorium on this type of construction until the middle bridge was completed.

Attorney Chopin questioned traffic expert Joseph B. Pollock, Jr., regarding the number of people attending events at Mar-a-Lago and the impact on traffic.

In response to Councilman Shaw regarding enforcement of numbers of people permitted at events, Fire-Rescue Chief Ken Elmore responded that he had the authority to enforce fire prevention codes, however, if occupancy was below the fire prevention code, but above what may be required by the Town Council, it may be a police enforcement action.

Assistant Police Chief Michael Reiter commented that he was not aware of any specific ordinance that would allow enforcement action by the Police Department. He indicated that there was a great deal of concern regarding traffic, and the ability of ambulances or police cars trying to get through the surrounding streets in the hypothetical situation described by President Pro-Tem Wyett, where there were two simultaneous events; one at Mar-a-Lago with 750 guests, and one at Bath & Tennis Club with 500 guests.

Attorney Royce noted that the terms of the Declaration of Use Agreement required that the Mar-a-Lago Club coordinate its events with the Bath & Tennis Club, so that they would not have two special events occurring at the same time.

Fire-Rescue Chief Elmore stated that he would prefer a permanent structure, with built in fire protection, over a tent, however, traffic was still a concern. He suggested that the traffic management plan guarantee that there would be no delay in emergency response vehicles either going to Mar-a-Lago or going by Mar-a-Lago.

Attorney Royce questioned traffic expert Joseph B. Pollack, Jr., asking him why he had not taken into consideration the idea that there would be different or additional facilities in connection with the report?

Mr. Pollock replied that the report was based upon observed traffic activity, and traffic was being forecasted associated with a membership level in the future. The County had accepted that methodology, based on membership, not facilities.

Attorney Chopin resumed with his questioning of Mr. Pollock, and then began with questioning of Yvonne Ziel regarding the traffic management plan.

Councilman Wyett asked Ms. Ziel if she had information on the actual traffic counts entering and leaving the Mar-a-Lago Club on a seven day basis?

Ms. Ziel replied that the only good data that she had on a seven day basis was the '96-'97 season, was which an average of 295 per day.

Councilman Shaw asked Attorney Royce what guarantees he could give the Town Council that attendance limits would be enforced?

Attorney Royce replied that any guarantee required by the Town Council would be met. He suggested that a policy of cutting off reservations at a certain point could be enforced, and that there be a way for someone to monitor that. He noted that the existing Declaration of Use Agreement addressed remedies available to the Town on page seven.

Councilman McDonald asked Town Attorney Randolph which of those remedies could be implemented quickly without expense, such as litigation?

Town Attorney Randolph responded that he did not believe any of the remedies could be enforced quickly and without expense.

Councilman McDonald pointed out to Attorney Royce that all of the remedies in the Declaration of Use Agreement were not remedies that the Town would want to try to enforce, and that a new remedy was needed, that could be enforced quickly and without Town expense. He suggested that Attorney Royce provide a remedy that could be used.

Mr. Blackman suggested that an incentive program could be used, with a maximum limit determined and if it was violated, the limit could be lowered, or events could be ceased for a certain period of time.

Attorney Kolins suggested that Mrs. Massey would be better served by a building than a tent, however, perhaps a building no larger than the 390 maximum would serve the interest of everyone.

Councilman McDonald commented that he did not think an applicant should have to build something so small that it would need to be enlarged in the future. He suggested that the method of control would be the number of people allowed to be in the building, no matter what size it was.

Attorney Kolins pointed out that the current tent could hold far more people than allowed, and there had been consistent violations. He suggested that canvas was being traded for brick. He suggested that the request for a permanent building may be premature.

President Smith asked Mr. Moore if the Mar-a-Lago Club came to the Town each year to request a permit for the tent?

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

Mr. Moore replied affirmatively, with the number of people not to exceed 390.

Councilman Shaw proposed that the tent remain for the upcoming year with the current capacity limitations, and if no violations occurred during that year, the Mar-a-Lago Club would then receive the authority to expand the use of the pavilion building to go to a 500/650 tier for occupancy. He explained that the building would have to have certain constraints within the interior design of the building to preclude excessive space.

President Smith asked how enforcement of the limitations of people would be accomplished?

Attorney Royce suggested that perhaps a third party could monitor and report.

Attorney Rogers suggested that reduction of the size of the pavilion building would eliminate the need for a parking garage.

President Pro-Tem Wyett suggested that 500 occupancy was similar to other clubs in the area, however, he believed that the size of the building must come down.

At this time President Smith declared that the Town Council was in executive session.

Councilman McDonald commented that he was opposed to the Club getting an automatic approval based on a one year performance record, as suggested by Councilman Shaw.

President Pro-Tem Wyett moved deferral of Modified special Exception No. 9-99 for one month, in order to complete analysis relative to the garage, the traffic management plan, and site plan review. President Smith passed the gavel to second the motion.

Attorney Royce asked if the deferral would allow new testimony, new experts, and more discussion concerning concurrency?

President Smith recommended that the Town Council remain in executive session for the next meeting.

Town Attorney Randolph pointed out that if new information was discussed, the public ought to have the opportunity to comment on that new information.

Attorney Kolins agreed with Attorney Randolph, commenting that the applicant was being asked to come to the next meeting with new ideas, and the Town Council may also have some new ideas at the next meeting, and he maintained that the public should have the opportunity to participate in those discussions on new information.

President Pro-Tem Wyett clarified the motion to defer, stating that testimony would be limited to new information, anything that had not yet been covered.

Town Attorney Randolph noted that certain criteria set forth in the Town Code must be met, and the public would have the right to address whether the criteria had been met or not. He stated that there was no way of knowing what would occur at the next meeting, and it would be difficult to state that there would be no further testimony, etc.

President Pro-Tem Wyett again clarified the motion to defer to a time certain in July, making an effort not to re-hash all that had been discussed this evening, and allowing public comment.

On roll call the motion to defer carried unanimously.

Councilman McDonald commented that he believed Modified Special Exception No. 9-99 should be included with the next Town Council Meeting, on July 13, 1999, setting some parameters.

President Pro-Tem Wyett moved acceptance of deferral of Modified Special Exception No. 9-99 With Site Plan Review, to be continued at the end of the Tuesday, July 13, 1999, Town Council Meeting, with both sides prepared to be brief and to the point, with public comment. At that time the pavilion, the traffic management plan, and the parking garage would be discussed.

XVII ANY OTHER MATTERS

The Ordinances, Rules & Standards Committee Meeting of June 15, 1999 was canceled and would be re-scheduled at a later time

XVIII ADJOURNMENT

The meeting of June 8, 1999, was adjourned at 1:55 A.M. on June 9, 1999, to be continued (with further discussion of Item V. - Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach) on June 11, 1999, at 9:30 A.M., and with Item XVI. B. 7. Modified special Exception No. 9-99 With Site Plan Review to be deferred and continued at the July 13, 1999, Town Council Meeting.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

The meeting of June 11, 1999 was called to order at 9:45 A.M. in the Town Council Chambers, and was adjourned at 11:20 A.M. (Minutes of same are included below as well as under Item V. A. (Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach) of the Agenda of June 8, 1999).

The continuation of the Town Council Meeting of June 8, 1999, was called to order at 9:45 A.M. on Friday, June 11, 1999. Elected officials in attendance were President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen McDonald, McLendon and Shaw. Mayor Ilyinsky was absent from the meeting. Those in attendance representing the Town of Palm Beach were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Town Attorney John Randolph, Director of Public Works Al Dusey, and Deputy Town Clerk Susan Eichhorn. Others in attendance for all or a portion of the meeting were: City of West Palm Beach Mayor Joel Daves, City of West Palm Beach Attorney Pat Brown, and City of West Palm Beach Deputy City Attorney Claudia McKenna.

President Smith stated that discussion would continue on Item V. A. Consideration of Water Franchise Agreement Between the Town and the City of West Palm Beach.

Town Attorney Randolph reported that he was pleased to announce that a Water Agreement was now recommended for approval of the Town Council, subject to some minor language modifications to be made by the respective staffs. He noted that the two primary items remaining unresolved at the last meeting (June 8, 1999) regarding provisions for the wholesale agreement and additional Capital Improvement Projects (CIP) and that language had now been provided. He referred to discussion of the wholesale agreement language on page nine of the Agreement, explaining that the new language read as follows: "The wholesale renewal term shall be based on a wholesale rate to be determined by the parties in accordance with the procedure described below: a sample rate calculation using a wholesale formula shall be made by the City on or before the 25th anniversary of the effective date, and such wholesale formula and sample rate calculations shall be provided to the Town within 60-days of such date; it being understood that such sample rate calculation may change, based upon applying the wholesale formula on the transfer date. Upon receipt by the Town of the wholesale formula and sample rate calculation the parties shall commence good faith negotiations to facilitate the Town in its sole discretion, to select a retail renewal term, or a wholesale renewal term, or to allow the agreement to terminate at the end of the initial term."

Councilman McLendon asked the representatives of the City what the existing agreement with Royal Palm Beach called for in relation to adjustments in the future?

City Attorney Pat Brown replied that he believed that there was a CPI index, and the rates were fixed for a short term of 5-7 years. It was not a wholesale arrangement that the City could offer to a customer of any size.

President Smith commented that there had been exhaustive discussion of the Royal Palm Agreement during the negotiation period, and it had been realized that the terms of that Agreement and what it accomplished was very different from what the Town of Palm Beach was discussing.

In response to the query of Councilman Wyett concerning the rates that would have been calculated from the formula in the draft Agreement, Assistant Town Manager Peter Elwell replied that the City had used that formula to arrive at \$1.78 per thousand gallons as a wholesale rate, using today's dollars. Town staff believed that the appropriate rate in today's circumstances would be substantially lower than that, and the concern with having any formula was that it would not provide assurances, and that it would be a wise idea to remain silent about the exact formula, and allow that process to be negotiated in 25 years.

Attorney Randolph referred to page 11 of the Agreement, which addressed the concerns of Councilman Wyett regarding the assessment of Town users for the costs of storm drainage and sewer in the City of West Palm Beach in its rates. He noted that he had suggested to Mr. Brown that language be added in the rate section on page 11 saying that the Town consumers would not be assessed in the water rate structure for costs relating to storm drainage and sewer. The City had given consideration to that language, and had not been in agreement, but suggested that language be modified to read: "The City agrees to set rates in accordance with prudent rate making practices..."

After discussion of language regarding reverse osmosis solely for the distribution to supplement irrigation (page 4 of the Agreement), Councilman Wyett suggested that the word "solely" be taken out in order to clarify the usage, should an emergency situation take place.

Mr. Elwell explained that the quality of the water was such that the actual final use of the water could be something other than watering a lawn, however, the intent of the language in the Agreement was to provide the Town the opportunity to supplement for irrigation purposes.

Attorney Brown commented that the City understood that once the water got into the pipes the provision would not be very enforceable, however, the City had wanted the provision in to make clear the intent of why the water was going into the pipes in the first place. He suggested that the language "solely for the purpose of distribution..." be added to the Agreement on page 4.

In response to the concerns of Councilman Wyett concerning the possibility of a surcharge during negotiations past the 30th year, Attorney Brown explained that the City had statutory rights on the surcharge, which it had waived for the purposes of the 30-year term, and any extension by the Town of that term.

Town Attorney Randolph explained that the problem with the CIP was that the Town wanted a provision which would allow for additional capital improvements to be made if there was not enough in the R & R fund and after the \$16.5-\$18 million had been spent. A provision had then been drafted which would allow the Town to make additional capital improvements with the proviso that the City would assist it in floating any bond issues which might be necessary, and that the City would pay from City wide revenues the cost of those

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999

capital improvements during the time that the City continued to own the system; that upon transfer of the system to the Town, the Town would bear the remainder of the debt. The City had objected, but agreed to a provision where they would assist the Town in floating any necessary bonds, but that the costs would not be borne by the City wide system, but entirely by the Town. After further discussion between the two staffs, a compromise position had been reached, whereby the City would agree to bear the costs of part of the capital improvements City wide, but only up to \$2.5 million indexed from the date of the Agreement. That indexing figure came up to \$3.5-\$4 million, and the Town wanted capital improvements over and above everything that was already in the Agreement. Additional amounts that may be needed to be spent over and above the \$2.5 million would be dealt with in an incremental fashion, with the proposal that in the event the additional \$2.5 was needed in capital improvements that the Town could either pay for it themselves, or the City would pay for it through the City wide system, but the Town would give a 5-year extension of the Agreement in consideration. Those increments would then continue in \$2.5 million increments for three additional 5-year terms. He noted that if the concept was agreeable to all, staffs would meet and refine the language.

Attorney Pat Brown noted that neither the Town nor the City had the opportunity for bond counsel comments on the paragraph, and there may be some fine tuning upon their review.

In response to Councilman Wyett regarding the default language on page 26, Attorney Brown explained that the City had a Consumptive Use Permit, and the Town was a consumer under that permit, and the City had a duty to supply the Town pursuant to regulatory obligations, and if there was destruction to the water plant, everyone would be equally affected. If a system wide emergency did occur, the City would do the best it could.

Town Attorney Randolph suggested that the language on the bottom of page 26 and top of page 27 read: "The sole remedies for default shall be suit for equitable relief, such as specific performance, an injunction, and/or damages."

Attorney Brown agreed with the modified language.

Mr. Randolph then referred to Item F regarding the recording of the Agreement, and explained that neither party was sure that the Agreement needed to be recorded; thus the language would be modified to read that the Agreement may be recorded in the public records, and if it was found that it needed to be recorded it could then be done.

Mr. Randolph referred to page 30 "L" in regard to the transfer, language had been added as italicized: "the rights are personal to the parties and they may not be assigned except upon the prior written consent of the other party, *which consent shall not be unreasonably withheld*. Also on page 30, Mr. Randolph noted that it had been resolved that the attorneys would meet and draft language as Item "O" which would address agreement by each party not to take any action during the term of the Agreement which would adversely affect the ability of the parties to perform.

In response to the concerns of Councilmen Shaw and Wyett regarding parallel piping, Attorney Brown stated that as long as it was not competing with the City, as the exclusive distributor of all water, both irrigation and potable.

Councilman Shaw moved approval of Resolution 22-99. The motion was seconded by Councilman Wyett with the technical language modifications to be made by both parties.

Town Attorney Randolph read Resolution 22-99:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A RETAIL WATER SERVICE AND FRANCHISE AGREEMENT WITH THE CITY OF WEST PALM BEACH, AND AUTHORIZING THE MAYOR OR OTHER APPROPRIATE TOWN OFFICIAL AND THE TOWN CLERK TO EXECUTE THE AGREEMENT, SUBJECT TO APPROVAL BY THE CITY OF WEST PALM BEACH BY JUNE 15, 1999, PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

On roll call the motion carried 4/1, with Councilman McLendon casting a dissenting vote.

Councilmen McDonald and Shaw left the meeting at 11:00 A.M. ON June 11, 1999.

At this time, Attorney Randolph brought up another matter from the Town Council meeting of June 8, 1999, for clarification: The amount of \$7,500 had been approved for allocation to assist with the I-95 interconnect project challenge, and a letter noting the objections of the Town had been drafted to the South Florida Water Management District which had been hand delivered to them.

Mr. Randolph requested clarification regarding the approval of the funding in the amount of \$7,500, which he had understood was to assist the El Vedado group, without the filing of an independent petition to challenge the project.

President Smith replied that it was her understanding that it had been a third party contribution in support of the actions of the El Vedado group, and that there seemed no apparent reason for the Town to take any independent action at this time.

Mr. Ned Barnes, of the Palm Beach Civic Association, commented that he had understood that the \$7,500 approved by the Town Council was to be donated to the El Vedado group.

Town Attorney Randolph responded that he had understood that \$7,500 had been authorized to be used in the Town efforts to assist the El Vedado group.

Because of the confusion regarding this matter, Councilman Wyett suggested that the issue be deferred to be clarified and discussed again at the July 13, 1999 Town Council Meeting.

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 8, 1999~~

The continuation of the Town Council Meeting of June 8, 1999, was adjourned at 11:20 A.M. on June 11, 1999.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk